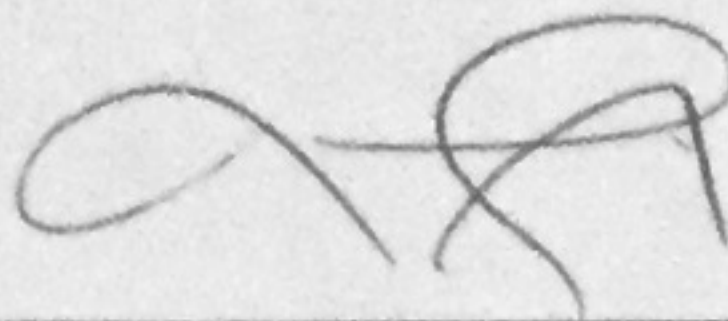


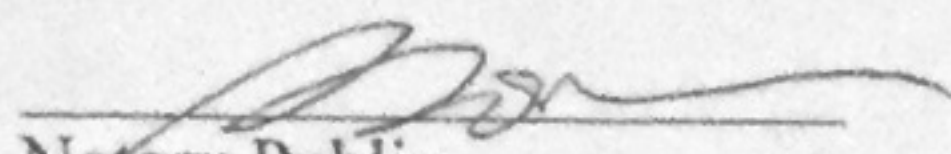
robe and must recuse because she discriminated against me in violation of judicial commission rules and codes of conduct of ny judges. It would cost court zero to provide cart, but capeci denied and caused me to lose meaningful communication required under the ada for my disabilities.

WHEREFORE, it is respectfully requested that the relief sought, herein be in all respects granted, together with such other and further relief as to this Court may seem just, proper and equitable under the circumstances.



Marc Fishman, Petitioner

Sworn to before me on this
2nd day of August 2020


Notary Public

STELLA BORUKHOVA
Notary Public, State of New York
No. 01BO6354071
Qualified in Queens County
Commission Expires 02/06/2021

Division of Human Rights

JONATHAN J. SMITH
DEPUTY COMMISSIONER

August 3, 2020

Re: Mary Flanagan - New York State Unified Court System
Case No. 19208671

Exhibit
"A"

To the Parties Listed Below

The above-referenced case has been filed with the White Plains Office of the New York State Division of Human Rights.

In an effort to expedite the handling of pending cases and in an effort to achieve favorable resolutions of these charges, the Division of Human Rights (DHR) has selected this case to be part of the Division's early resolution program. All parties must appear at the scheduled for a conciliation conference at the outset of the proceedings.

The conciliation conference for your case is scheduled for 8/15/2020 at 10:00 AM by telephone. Please use the following call-in instructions: 914-899-3130. You may have an attorney represent you at this conference if you wish, but you are not required to do so.

During the conciliation conference a DHR representative will facilitate the process of settlement. You should be prepared for the following:

1. Compromise and cooperation in the achievement of a resolution. The responding party should be aware that in most cases, this will include providing some benefit, such as monetary compensation, to the complainant.
2. Actual signing of a conciliation agreement to officially conclude the processing of the discrimination complaint. If a responding party participates through a representative, that representative must have the authority to negotiate a settlement and to sign the written agreement.

Your appearance at the conference is required. Your cooperation in this process will expedite the handling of the case. Entering into a signed conciliation agreement at the conference is voluntary for all parties.

If the matter is not resolved, it will proceed without interruption to a fact-finding conference. Therefore, please also come prepared to discuss the issues of the case, and bring witnesses, documents, etc. in support of your position.

Exhibit
"B"

Order Protection
not valid
if
not
Served and
written copy
never
given to
me

Order of Protection Against

Name: FISHMAN, MARC H
Birth Date: [redacted] Race: WHITE
Sex: MALE
Height: 6 ft. 01 in. Weight: 250 lbs.
Eye Color: HAZ Hair Color: BRO
SSN: [redacted]
Term Details:

Exhibit "B"
Official Database
Westchester Police
County of
Orders of
Protection

Party Requesting Order

NOTE: Requesting Party is Also a Protected Person

Name: SOLOMON, JENNIFER S

Birth Date: [redacted]
Sex: FEMALE Race: WHITE
SSN: [redacted]

Term Details:

REFRAIN FROM ASSAULTING, HARASSING, ETC. THE PERSON : REFRAIN FROM ASSAULT, STALKING, HARASSMENT, AGGRAVATED HARASSMENT, MENACING, RECKLESS ENDANGERMENT, STRANGULATION, CRIMINAL OBSTRUCTION OF BREATHING OR CIRCULATION, DISORDERLY CONDUCT, CRIMINAL MISCHIEF, SEXUAL ABUSE, SEXUAL MISCONDUCT, FORCIBLE TOUCHING, INTIMIDATION, THREATS, IDENTITY THEFT, GRAND LARCENY, COERCION OR ANY CRIMINAL OFFENSE AGAINST JENNIFER S SOLOMON (DOB: [redacted]); (02)
REFRAIN FROM COMMUNICATION BY MAIL OR BY TELEPHONE, E-MAIL, VOICE MAIL, OR OTHER ELECTRONIC MEANS : REFRAIN FROM COMMUNICATION OR ANY OTHER CONTACT BY MAIL, TELEPHONE, E-MAIL, VOICE-MAIL OR OTHER ELECTRONIC OR ANY OTHER MEANS WITH JENNIFER S SOLOMON (DOB: [redacted]) BY ANY MEANS, INCLUDING THROUGH THIRD PARTIES; (14)
STAY AWAY FROM THE PERSON : JENNIFER S SOLOMON (DOB: [redacted]); (1A)
STAY AWAY FROM THE HOME OF : THE HOME OF JENNIFER S SOLOMON (DOB: [redacted]); (1B)
STAY AWAY FROM THE PLACE OF EMPLOYMENT OF : THE PLACE OF EMPLOYMENT OF JENNIFER S SOLOMON (DOB: [redacted]) AT THE CHATSWORTH SCHOOL, INCLUDING THE CHATSWORTH SCHOOL GROUNDS; (1E)

Caveat Text

** DEFENDANT ADVISED IN COURT OF ISSUANCE AND CONTENTS OF ORDER - ORDER IS ENFORCEABLE ** *** NOTE: THIS ORDER HAS NOT BEEN SERVED ***

Order of Protection

MKE: FINAL
Court ORI: NY059023J - WESTCHESTER COUNTY FAMILY COURT
Court Type: FC
Law Enforcement ORI: NY0590000 - WESTCHESTER COUNTY DEPARTMENT OF PUBLIC SAFETY
914-864-7701
Court Order Number: 2018-003894
Docket Number: V-08186-14/15B
Family Unit: 131794 Family: TRUE
Service Required: TRUE Court Advised: TRUE
Warrant Returned: FALSE Brady: TRUE
Judge: SCHAUER, MICHELLE I
Issued: 06/13/2018 Expires: 06/13/2019
Served Date: Time:

Order
not
Served

Exhibit "C"

Transcript Criminal Case Proving my¹
innocence

SUPERIOR COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER - CRIMINAL TERM - PART DZ

(Did not Go

-----x
THE PEOPLE OF THE STATE OF NEW YORK,

on x-write paper)

-against-

Did not Get Served
order
of
protection

MARC FISHMAN,

Defendant

12/15/18 was
a supervised
visit

-----x
TRIAL (Cont'd)

Westchester County Courthouse
111 Dr. M.L.K., Jr. Blvd.
White Plains, New York 10601

January 27, 2020

B E F O R E:

HONORABLE DAVID S. ZUCKERMAN,
County Court Judge

A P P E A R A N C E S:

OFFICE OF ANTHONY A. SCARPINO, JR., ESQ.
DISTRICT ATTORNEY - WESTCHESTER COUNTY

For the People
BY: AMIT PARAB, ESQ.,
Assistant District Attorney

JOSEPH G. GOUBEAUD, ESQ.,
For the Defendant
22 West First Street - Suite #502
Mount Vernon, New York 10550

Nicole Ameneiros
Senior Court Reporter

Cross - Ann Elliott - People

1 THE COURT: Don't. Please don't answer that,
2 ma'am.

3 THE WITNESS: Oh, sorry.

4 Q Now, it is your testimony that you had worked out on
5 December 15th a partial visit, so to speak; is that correct?

6 A Correct, yes.

7 Q Now, if I told you Ms. Solomon testified that the
8 entire visit was canceled that day would she be wrong?

9 A Correct.

10 Q Your testimony was, I believe, that you stopped a
11 couple of houses away when you got to the area in New Rochelle;
12 is that correct?

13 A Yes.

14 Q And that you saw Ms. Solomon outside already?

15 A Yes, I did.

16 Q Now, if she testified that you came to the door and
17 rang the bell, that was the first contact that she had with you,
18 would she be wrong?

19 MR. PARAB: Objection.

20 THE COURT: Sustained.

21 Q Approximately how long were you talking with
22 Ms. Solomon on the front porch?

23 A It was probably anywhere from 5 to 10 minutes.

24 Q Okay. And it was some time towards the end of that
25 stretch that the car drove past the house?

12/15
W.S.
Visit
per
Court
Ordered
Supervisor

Cross - Edward Edmead - People

29

1 court at the time the order was issued.

2 MR. PARAB: Judge, I have no further questions of
3 this witness.

4 THE COURT: Whenever you're ready, Mr. Goubeaud,
5 you may cross-examine.

6 MR. GOUBEAUD: Thank you.

7 THE COURT: You're welcome.

8 CROSS-EXAMINATION

9 BY MR. GOUBEAUD:

10 Q Mr. Edmead, you indicated it wasn't actually
11 distributed to Mr. Fishman in the courtroom; is that correct?

12 A Yeah, I said --

13 Q I'm sorry. Let me rephrase the question.

14 That order that is in front of you that you referred to
15 today --

16 A Yes.

17 Q -- it was not -- a copy of that order wasn't given to
18 Mr. Fishman in the courtroom; is that correct?

19 A That is correct.

20 Q Is that because he was taken from the courtroom and put
21 into custody right away?

22 A Yes, he was.

23 Q And did you personally give him a copy of that order at
24 a later time?

25 A I handed it to the court officers who where responsible

1 for securing him in the holding pen that day.

2 Q So the fact that it has that little box checked up top
3 that says it was distributed to him, it wasn't actually given to
4 him that particular day, correct?

5 A It indicates who was present.

6 Q I understand that. And that's over on the right-hand
7 side it indicates who was present in court?

8 A Correct.

9 Q But then there's a little spot on the top of that order
10 which indicates that it was distributed, correct?

11 A Yes.

12 Q And the box that says respondent, who would have been
13 Mr. Fishman, is checked as well, correct?

14 A Yes.

15 Q But it's fair to say that you did not -- excuse me --
16 specifically give it to him; is that correct?

17 A Personally, no. I did not personally hand it to him.

18 Q Thank you.

19 Is it fair to say that order refers to a September 2014
20 petition?

21 A I think this order refers to a violation from 2014 on
22 top of an underlying petition for a family offense. Looking at
23 the docket numbers it's a supplemental docket number which
24 indicates it was something that was filed after the initial
25 family offense petition. In fact, it refers to several

Proceedings

34

1 on her property, had no actual contact with him, Judge, had
2 no communication with her at that location, and I believe
3 that there is a plausible explanation for him actually being
4 in the neighborhood. So I would argue that the People have
5 failed to make out a prima facie case and would ask the
6 Court to dismiss at this point in time.

7 THE COURT: Thank you, Mr. Goubeaud.

8 Before I hear from the People, let me just place on
9 the record a couple of things. First, People's Exhibit 1,
10 which is the order of protection that was issued by Judge
11 Schauer that the defendant's alleged to have violated here,
12 does not set forth any distances with respect to being --
13 withdrawn. With respect to staying away from the home of
14 Ms. Solomon.

15 Second, the accusatory instrument here charges the
16 defendant with violating that order of protection by going,
17 and I think I'm quoting, quote, to the victim's home in
18 violation of the duly issued order of protection, end quote.

19 If I'm hearing you correctly, Mr. Goubeaud, your
20 motion is that the People failed to make out the element of
21 violating the order in that the defendant did not go on the
22 property, across the property line and therefore did not go
23 to the home, or put another way, did not violate the
24 provision of the order that directs him to stay away from
25 the home.

Proceedings

35

1 MR. GOUBEAUD: That is correct, Judge.

2 THE COURT: Okay.

3 MR. GOUBEAUD: That is the basis for my arguments
4 with respect to the proof that has been presented.

5 THE COURT: Thank you.

6 Do you want to be heard on any of this, Mr. Parab?

7 MR. PARAB: No. I believe that the People have
8 established, based upon the evidence in the light most
9 favorable to the People, that we do have a prima facie case.
10 The evidence shows that the defendant went near or to the
11 home of the protected party in violation of the order of
12 protection.

13 THE COURT: I agree that in terms of the motion I
14 do have to assess the evidence in the light most favorable
15 to the People, but on the other hand, I don't think there's
16 any dispute, factually or evidentiary wise, the defendant
17 did not cross the threshold, was not on the property itself,
18 unless someone wants to tell me otherwise. Do you,
19 Mr. Parab?

20 MR. PARAB: No, I agree with that as well.

21 THE COURT: This Court is troubled on the issue
22 that I just identified; the failure of the order of
23 protection to set forth a distance at all, which means we're
24 left merely with the language, quote, stay away from -- it's
25 Paragraph B -- the home of Jennifer Solomon, end quote.

Proceedings

36

1 In addition, case law is very clear that in terms
2 of evaluating or interpreting an order any ambiguity in the
3 order must be resolved in favor of the defendant. The Court
4 of Appeals so held in the matter of Department of
5 Environmental Protection of the City of New York versus
6 Department of Environmental Conservation of the State of New
7 York under NY2d. That's also set forth by the Second
8 Department in the matter of Holtzman versus Beatty,
9 B-E-A-T-T-Y, 97 AD2d 79; as well as again by the Second
10 Department years later in People versus Roblee, R-O-B-L-E-E,
11 70 AD3d 225 [2009].

12 In contrast, in People versus Guernsey,
13 G-U-E-R-N-S-E-Y, 37 AD3d 989 [2007], the Third Department
14 addressed a stay away provision that also contained
15 additional language that required the defendant to stay at
16 least 250 feet away from his ex-wife to be compared with,
17 for example, People versus Gunatilaka, G-U-N-A-T-I-L-A-K-A,
18 156 Misc.2d 958. That's a decision by Judge Goldberg, when
19 she was sitting in New York City Criminal Court, where she
20 specifically held that the allegations that the defendant
21 was across the street from the protected party's place of
22 business is insufficient to show that the order was
23 violated. That case is cited with approval by the Second
24 Department in People versus McDonald, M-C-D-O-N-A-L-D, 287
25 AD2d 655 [2001].

Proceedings

39

1 intent, what she specified in terms of what the order of
2 protection meant to her when she issued the order of
3 protection, she puts in her order exactly how the children
4 would be dropped off and picked up from the home. So
5 clearly the judge's intent was to keep him away from the
6 vicinity of her home. That would be my argument.
7 Obviously, I understand what Mr. Goubeaud is saying in terms
8 of why that shouldn't be included, but often times courts
9 may look to see what the judge's intent was in terms of what
10 the order of protection meant.

11 THE COURT: I have a couple of thoughts with
12 respect to that, Mr. Parab. First, were we dealing with an
13 alleged violation of a visitation order, which wouldn't be
14 heard in this court, it would be in family court, I would
15 say you're probably right. However, I do agree with
16 Mr. Goubeaud. Judge Schauer's intent, even though it is
17 written in the decision and order that she issued at the
18 time she issued this final order of protection from family
19 court, I believe is not relevant here. Moreover, there's no
20 indication the defendant personally was served or read that.

21 I think we're bound by the terms of the order of protection
22 that is the subject of this criminal contempt action.

23 And I mentioned earlier, I'll mention it again,
24 there's been no request that I consider something lesser in
25 the nature of an attempt or otherwise. What I understand

Exhibit
"D"

Exhibit
"D"
Appellate
decision
that
affirmed
all orders
of
protection subject to
supervised visitation

JUSTIA

Matter of Solomon v Fishman

Matter of Solomon v Fishman 2020 NY Slip Op 01352 Decided on February 26, 2020 Appellate Division, Second Department Published by New York State Law Reporting Bureau pursuant to Judiciary Law § 431. This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on February 26, 2020 SUPREME COURT OF THE STATE OF NEW YORK, Appellate Division, Second Judicial Department.

REINALDO E. RIVERA, J.P.

RUTH C. BALKIN

JOHN M. LEVENTHAL

PAUL WOOTEN, JJ.

2018-08743

2018-08934

(Docket Nos. V-8186-14/15B/17P, V-8187-14/15B/17P, V-8188-14/15B/17P, V-8189-14/15B/17P)

[*1] In the Matter of Jennifer Solomon, respondent,

v

Marc Fishman, appellant. (Proceeding No. 1.)

In the Matter of Marc Fishman, appellant,

v

Jennifer Solomon, respondent. (Proceeding No. 2.)

JUSTIA

ORDERED that the appeal from the order of protection is dismissed as academic, without costs or disbursements.

The parties were divorced in 2012, and are the parents of four children. On May 5, 2014, the parties entered into a so-ordered agreement providing, inter alia, for joint legal custody of the children, with the mother having physical custody and final decision-making power, and the father having alternate weekend and midweek parental access with the children thereafter (the May 2014 agreement). Thereafter, the mother filed certain petitions, including a family offense petition against the father, and the Family Court entered temporary orders of protection and interim parental access orders. In 2015, the mother filed a petition to modify the May 2014 agreement, so as to award her sole legal and residential custody of the children. The father cross-petitioned to enforce the May 2014 agreement. After a full day of hearing, the court granted the mother's petition and denied the father's petition. Further, the court issued an order of protection directing, inter alia, the father to stay away from the children, their home, and their schools, except for certain supervised visitation access, until and including June 13, 2019.

The order of protection expired by its own terms on June 13, 2019, and the duration of the appeal from that order would, under the facts of this case, have no direct effect upon the parties (see *Matter of Linda F. [Jose F.]*, 119 AD3d 944, 945). Further, under the facts of this case, the issuance of that order of protection did not constitute a permanent and significant stigma which might indirectly affect the [father's] status in potential future proceedings. (*Matter of McClure v McClure*, 176 AD2d 325, 326 [internal quotation marks omitted]; see *Matter of Melikshvili v Grigolava*, 20 AD3d 569, 570). Accordingly, we dismiss the appeal from the order of protection as academic.

"Modification of an existing court-sanctioned custody or [parental access] arrangement is permissible only upon a showing that there has been a change in circumstances such that a modification is necessary to ensure the continued best interests and welfare of the children" (*Matter of Spencer v Killoran*, 147 AD3d 862, 863, quoting *Matter of O'Shea v Parker*, 116 AD3d 1051, 1051; see *Matter of Lewis-Daniel v Daniel*, 176 AD3d 940). "[I]nasmuch as custody determinations turn in large part on assessments of the credibility, character, temperament, and sincerity of the parties, the [court's] determination should be disturbed only if it lacks a sound and substantial basis in the record" (*Bondarev v Bondarev*, 152 AD3d 482, 482, quoting *Matter of Bacchi v Clancy*, 101 AD3d 993, 993).

Here, the Family Court's determination that there had been a change in circumstances requiring a transfer of legal custody is supported by a sound and substantial basis in the record. (*Matter of Lewis-Daniel v Daniel*, 176 AD3d at 940; *Bondarev v Bondarev*, 152 AD3d at 482).

Stay
away
from
home
except
for
supervised
visitation

COUNTY COURT
COUNTY OF WESTCHESTER

PEOPLE OF THE STATE OF NEW YORK

Against

MARC FISHMAN

Defendant

Ind# 6293M-2018
NOTICE OF
MOTION

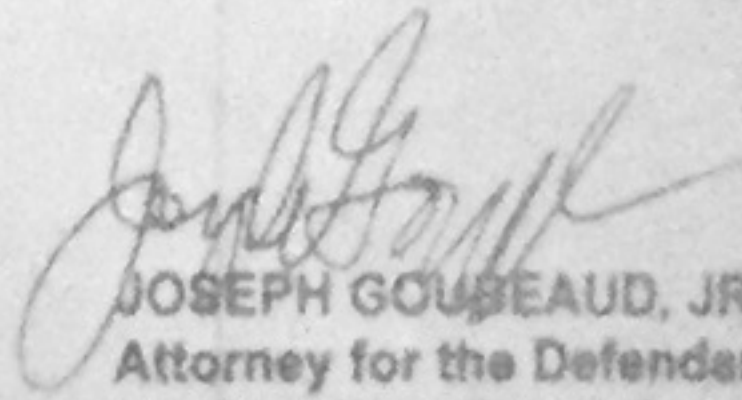
SIRS:

PLEASE TAKE NOTICE that upon the affirmation of Joseph Goubeaud, Jr., the Complaint and proceedings had herein. The undersigned will move this court before the Hon. David Zuckerman, at the County Courthouse, 111 MLK Blvd., White Plains, New York on September 23, 2020 at 9:30 o'clock in the forenoon of that day for an

ORDER pursuant to CPL article 440 vacating the verdict and setting aside the conviction rendered by the jury in this case based upon the discovery of a document in the possession of the New Rochelle Police Department that was not provided to the defense at or prior to trial which would have provided an ability to more effectively cross examine the police witness and probably produced a more favorable verdict.

ORDER for such other and further relief as to the Court seems proper

Dated: August 13, 2020



JOSEPH GOUBEAUD, JR.
Attorney for the Defendant
22 West First Street Suite 502
Mount Vernon, N.Y. 10550

Exhibit
"E"
Motion
to
Dismiss
Criminal
Case